(COMBINED TRANSPORT BILL OF LADING)

Consignor

SILITEK CORPORATION

B/L NO. TP/LAX95010054

Shipper's Reference 0013

Forwarder's Reference

Consigned to order of

REVEAL COMPUTER PRODUCTS INC
21701 PRAIRIE STREET CHATSWORTH CA 91311

NEGOTIABLE
COMBINED TRANSPORT
BILL OF LADING
issued subject to ICC Uniform Rules for a Combined Transport Document (ICC publication 298)

Notify address

1.LPI
2.REVEAL COMPUTER PRODUCTS INC.

BURLINGTON AIR EXPRESS INC.
dba BURLINGTON OCEAN SERVICES

BURLINGTON OCEAN SERVICES

Container Number	Place of Receipt
Ocean Vessel MING PLENTY 51E	**Port of Loading** KEELUNG, TAIWAN
Port of Discharge LOS ANGELES	**Place of Delivery** LOS ANGELES

Marks and Numbers	Number and Kind of Packages	Description of Goods	Gross Weight	Measurement
		SHIPPER'S LOAD AND COUNT SAID TO CONTAIN		
YMLU4443546/40' CY/CY 828424999	960CARTONS		12.960KGS	58.00CBM
YMLU6106251/40'HQ CFS/CFS	2PALLETS (=40CTNS)		560KGS	3.570CBM
	(962PACKAGES) VVVVVVVVVV		13,520KGS	61.570CBM
REVEAL IN DIA LOS ANGELES P/O#2382 ITEM:07-005-27 C/NO.1-960CTNS P/NO.1A-2A P'LT MADE IN TAIWAN R.O.C.		CONPUTER KEYBOARD "FREIGHT COLLECT" TOTAL: ONE (1) 40' DRY CNTR CONTAINER AND TWO (2) PALLETS ONLY.		
		PCCID NO: EYUR33SK		ON BOARD DATE

BURLINGTON INSPECTION COPY

according to the declaration of the consignor.

The goods and instructions are accepted and dealt with subject to the Standard Conditions printed overleaf

Taken in charge in apparent good order and condition, unless otherwise noted herein, at the place of receipt for transport and delivery as mentioned above.

One of these Combined Transport Bills of Lading must be surrendered duly endorsed in exchange for the goods. In Witness where of the original Combined Transport Bills of Lading all of this tenor and date have been signed in the number stated below, one of which being accomplished the other(s) to be void.

Freight Amount	Freight Payable at	Place and date of issue; Stamp and signature
O.F. AS ARRANGED	DESTINATION	TAIPEI TAIWAN R.O.C. JAN.22.1996
Cargo insurance through the undersigned ☐not covered ☐covered according to attached Policy	Number of Original BL's THREE(3)	
For delivery of goods please apply to BURLINGTON AIR EXPRESS 5500 W.CENTURY BLVD. LOS ANGELES, CA 90045 U.S.A. TEL:(310)338-0568 FAX:(310)338-0998 ATTN:GREG WATTS		2/5

BEST AVAILABLE COPY

Standard Conditions governing CONSIGNED TRANSPORT BILLS OF LADING

Definitions "Merchant" means and includes the Shipper, the Consignee, the Consignor, the Holder of the Bill of Lading, the Receiver and the Owner of the Goods. "The Freight Forwarder" means the issuer of the Bill of Lading as named on the face of it

The headings set forth below are for easy reference only.

CONDITIONS

1. Applicability
Notwithstanding the heading "Combined Transport Bill of Lading", the provisions set out and referred to in this document shall also apply if the transport not designated on the face of the Bill of Lading, is performed by one mode of transport only.
2. Definition of the "Combined Transport Bill of Lading"
2.1 By the issuance of the "Combined Transport Bill of Lading", the Freight Forwarder undertakes to perform and/or in his own name to procure the performance of the entire transport, from the place at which the goods are taken in charge as the place designated for delivery in the Bill of Lading
[illegible] Bill of Lading Conditions
2.2 For the purposes and subject to the provisions of the Bill of Lading, the Freight Forwarder shall be responsible for the acts and omissions of any person of whose services he makes use for the performance of the contract evidenced by the Bill of Lading.
3. Responsibility and title on the goods
3.1 By delivering the Bill of Lading the Merchant and his transferees agree with the Freight Forwarder that, unless it is marked "non-negotiable", it shall constitute title to the goods, and the holder, by endorsement of the Bill of Lading, shall be entitled to receive or to transfer the goods thereon mentioned.
3.2 The Bill of Lading shall be prima facie evidence of the taking in charge by the Freight Forwarder of the goods as therein described. However, proof to the contrary shall not be admissible when the Bill of Lading has been negotiated or transferred for valuable consideration to a third party acting in good faith.
4. Dangerous Goods and Indemnity
4.1 The Merchant shall comply with rules which are mandatory according to the national law or by reason of International Conventions, relating to the carriage of goods of a dangerous nature, and shall in any case inform the Freight Forwarder in writing of the exact nature of the danger, before goods of a dangerous nature are taken in charge by the Freight Forwarder and indicate to him if need be, the precautions to be taken
4.2 If the Merchant fails to provide such information and the Freight Forwarder is unaware of the dangerous nature of the goods and the appropriate precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation, and the Merchant shall be liable for all loss, damage, delay or consequences arising out of their being taken in charge, or their carriage, or of any service rendered thereto
The burden of proving the Freight Forwarder knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the person putting in the goods.
4.3 If any goods shipped with the knowledge of the Freight Forwarder as to their dangerous nature shall become a danger to the vehicle or cargo, they may in the manner be unloaded or landed at any place or destroyed or rendered harmless by the Freight Forwarder without liability on the part of the Freight Forwarder, except to General Average, if any
5. Description of Goods and Merchant's Packing
5.1 The Merchant shall be deemed to have guaranteed to the Freight Forwarder the accuracy, at the time the goods were taken in charge by the Freight Forwarder, of the description of the goods, marks, number, quantity, weight and/or volume as furnished by him, and the Consignor shall indemnify the Freight Forwarder against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars. The right of the Freight Forwarder to such indemnity shall in no way limit his responsibility and liability under the Bill of Lading to any person other than the Consignor
5.2 Without prejudice to Clause 8 (A) (2) (c), the Merchant shall be liable for any loss, damage or expense caused by faulty or inadequate packing of goods or by faulty loading or packing which packing and loading and/or bale when such loading or packing has been performed by the Merchant or on behalf of the Merchant by a person other than the Freight Forwarder, or by the defect or unsuitability of the containers, trailers or rails, which supplied by the Merchant, and shall indemnify the Freight Forwarder against any additional expenses so caused.
6. Extent of Liability
A 1) The Freight Forwarder shall be liable for loss of or damage to the goods occurring between the time when he takes the goods into his charge and the time of delivery
2) The Freight Forwarder shall, however, be relieved of liability for any loss or damage if such loss or damage was caused by,
a) an act or omission of the Merchant, or person other than the Freight Forwarder acting on behalf of the Merchant or whom the Freight Forwarder took the goods in charge;
b) insufficiency or defective condition of the packaging or marks (other numbers)
c) handling, loading, stowage or unloading of the goods by the Merchant or any person acting on behalf of the Merchant,
d) wastage in bulk or weight,
e) inherent vice of the goods,
f) war, warlike, blockade or restraint of kings, the consequences of which the Freight Forwarder could not avoid by the exercise of reasonable diligence,
g) any cause or event which the Freight Forwarder could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence,
h) a matter covered by the sections of a railway undertaking or a person using for hire a ship by the damage under an applicable International Convention or national law governing liability on analogous carriage.
3) The burden of proving that the loss or damage was due to one or more of the above causes of relief shall rest upon the Freight Forwarder
When the Freight Forwarder establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events specified in (a) to (h) above, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of these causes or events.
B When in accordance with clause 6 A 1 the Freight Forwarder is liable to pay compensation in respect of loss or damage to the goods and the stage of transport where the loss or damage occurred is known, the liability of the Freight Forwarder in respect of such loss or damage shall be determined by the provisions contained in any international Convention or national law, which compulsorily
(i) cannot be departed from by private contract, to the detriment of the claimant, and
(ii) would have applied if the Claimant had made a separate and direct contract with the Freight Forwarder in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international conventions or national law applicable.
7. Paramount Clause
The Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading, dated Brussels 25th August 1924, or in those countries where they are already in force the Hague Visby Rules contained in the Protocol of Brussels, dated February 23rd 1968, as enacted in the Country of Shipment, shall apply to all carriage of goods by sea and, where no mandatory international or national law applies, to the carriage of goods by inland waterways also, and such provisions shall apply to all goods whether carried on deck or under deck

8. Limitation Amount
8.1 When the Freight Forwarder is liable for compensation in respect of loss of or damage to the goods, such compensation shall be calculated by reference to the value of such goods at the place and time they are delivered to the Consignee in accordance with the contract or should have been so discharged.
8.2 The value of the goods shall be fixed according to the current commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
8.3 Compensation shall not, however, exceed 2 SDR (Special Drawing Rights) per kilo of gross weight of the goods lost or damaged, unless, with the consent of the Freight Forwarder, the Merchant has declared a higher value for the goods and such higher value has been stated in the CT Bill of Lading, in which case such higher value shall be the limit. However, the Freight Forwarder shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim.
9. Delay, Consequential Loss, etc.
Animal losses are not guaranteed by the Freight Forwarder. If the Freight Forwarder is held liable in respect of delay, consequential loss or damage other than loss of or damage to the goods, the liability of the Freight Forwarder shall be limited to double the freight for the transport covered by the Bill of Lading, or the value of the goods as determined in Clause 8, whichever is the less.
10. Delivery
10.1 The extension and limits of liability provided for in these Conditions apply in every case of claim against the Freight Forwarder for loss of or damage or delay to the goods whether the action be founded in contract or in tort.
10.2 The Freight Forwarder shall not be entitled to the benefit of the limitation of liability provided for in paragraph 2 of Clause 8 if it is proved that the loss or damage resulted from an act or omission of the Freight Forwarder done with intent to cause damage or recklessly and with knowledge that damage would probably result.
11. Liability of Servants and Sub-contractors
11.1 If an action for loss of or damage to the goods is brought against a person referred to in paragraph 2 of Clause 2, such person shall be entitled to avail himself of the defences and limits of liability which the Freight Forwarder is entitled to invoke under these Conditions.
11.2 However, it is proved that the loss or damage resulted from an act or omission of the person done with intent to cause damage or recklessly and with knowledge that damage would probably result, such person shall not be entitled to benefit of limitation of liability provided for in paragraph 3 of Clause 8.
11.3 Subject to the provisions of paragraph 2 of Clause 10 and paragraph 2 of this Clause, the aggregate of the amounts recoverable from the Freight Forwarder and the persons referred to in paragraph 2 of Clause 2 shall in no cases exceed the limits provided for in these Conditions.
12. Method and Route of Transportation
The Freight Forwarder reserves to himself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods.
13. Delivery
If delivery of the goods or any part thereof is not taken by the Merchant, at the time and place when and where the Freight Forwarder is entitled to call upon the Merchant to take delivery thereof, the Freight Forwarder shall be entitled to store the goods at the past thereof at the sole risk of the Merchant, whose upon the liability of the Freight Forwarder in respect of the goods or that part thereof shall be discharged and the cost (as may be) shall wholly accrue and the cost of such storage (if paid by or payable by the Freight Forwarder or any agent or sub-contractor of the Freight Forwarder) shall forthwith upon demand be paid by the Merchant to the Freight Forwarder.
14. Freight and Charges
14.1 Freight shall be paid in cash without discount and, whether prepayable or payable at destination, shall be considered as earned on receipt of the goods and not to be returned or repaid in any event.
14.2 Freight and all other amounts mentioned in this Bill of Lading are to be paid in the currency named in the Bill of Lading or, at the Freight Forwarder's option in the currency of the country of discharge or destination at the highest rate of exchange for bankers sight bills current for practicable freight on the day of discharge and for freight payable at destination on the day when the steamship is reported or arrived at the ports there or on the date of withdrawal of the delivery order, whichever rate is the highest, or at the option of the Freight Forwarder on the date of the Bill of Lading
14.3 All duties, taxes and charges or other assessments in connection with the goods shall be paid by the Merchant.
14.4 The Merchant shall reimburse the Freight Forwarder in proportion to the amount of freight for any costs for detention or delay or any other expenses of costs of whatever nature caused by war, warlike operations, epidemics, strikes, government enactment or force majeure.
14.5 The Merchant warrants the correctness of the declaration of contents, valuations, weight, measurements or values of the goods but the Freight Forwarder reserves the right to have the particulars examined and the weight, measurements or value verified. If on such examination it is found the declarations are incorrect it is agreed that a sum equal either to five times the difference between the correct figure and the freight charged, or to double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to the Freight Forwarder by the respective sums and lashes of freight on all or goods notwithstanding any other sum having been stated on the Bill of Lading as freight payable
15. Lien
The Freight Forwarder shall have a lien on the goods for any amount due under the Bill of Lading including storage fees and for the cost of recovering same, and may enforce such lien in any reasonable manner which he may think fit.
16. General Average
The Merchant shall indemnify the Freight Forwarder in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder including the deposit of cash.
17. Notice
Unless notice of loss of or damage to the goods and the general nature of such loss or damage be given to the Freight Forwarder or his servants or agents before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the Bill of Lading, or if the loss or damage be not apparent, within seven consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Freight Forwarder of the goods as described in the Bill of Lading.
18. Time Bar (Delivery)
Failure to effect delivery within 90 days after the expiry of a time limit agreed and expressed in a CT Bill of Lading or, where no time limit is agreed and so expressed, failure to effect delivery within 90 days after the time it would be reasonable to allow for proper completion and the continued transport operation shall, in the absence of evidence to the contrary, give to the party entitled to receive delivery, the right to treat the goods as lost.
19. Time Bar
The Freight Forwarder shall be discharged of all liability under the rules of these Conditions, unless suit is brought within nine months after
(i) the delivery of the goods, or
(ii) the date when the goods should have been delivered, or
(iii) the date when in accordance with Clause 18, failure to deliver the goods would, in the absence of evidence to the contrary, give to the party entitled to receive delivery, the right to treat the goods as lost.
20. Jurisdiction
Actions against the Freight Forwarder may only be instituted in the country where the Freight Forwarder has his principal place of business and shall be decided according to the law of such country

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Exhibit C
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Standard Conditions governing COMBINED TRANSPORT BILLS OF LADING

Definitions "Merchant" means and includes the Shipper, the Consignor, the Consignee, the Holder of the Bill of Lading, the Receiver and the Owner of the Goods. "The Freight Forwarder" means the issuer of this Bill of Lading as named on the face of it

The headings set forth below are for easy reference only.

CONDITIONS

1. **Applicability**
Notwithstanding the heading "Combined Transport Bill of Lading", the provisions set out and referred to in this document shall also apply if the transport as described on the face of the Bill of Lading, is performed by one mode of transport only.

2. **Issuance of the "Combined Transport Bill of Lading"**

2.1 By the issuance of the "Combined Transport Bill of Lading", the Freight Forwarder;
a) undertakes to perform and/or in his own name to procure the performance of the entire transport, from the place at which the goods are taken in charge to the place designated for delivery in the Bill of Lading
b) assumes liability as set out in these Conditions

2.2 For the purposes and subject to the provisions of the Bill of Lading, the Freight Forwarder shall be responsible for the acts and omissions of any person of whose services he makes use for the performance of the contract evidenced by this Bill of Lading.

3. **Negotiability and title to the goods**

3.1 By accepting the Bill of Lading the Merchant and his transferees agree with the Freight Forwarder that, unless it is marked "non-negotiable", it shall constitute title to the goods and the holder, by endorsement of the Bill of Lading, shall be entitled to receive or to transfer the goods herein mentioned.

3.2 The Bill of Lading shall be prima facie evidence of the taking in charge by the Freight Forwarder of the goods as herein described. However, proof to the contrary shall not be admissible when the Bill of Lading has been negotiated or transferred for valuable consideration to third party acting in good faith.

4. **Dangerous Goods and Indemnity**

4.1 The Merchant shall comply with rules which are mandatory according to the national law or by reason of international Convention, relating to the carriage of goods of a dangerous nature, and shall in any case inform the Freight Forwarder in writing of the exact nature of the danger, before goods of a dangerous nature are taken in charge by the Freight Forwarder and indicate to him if need be, the precautions to be taken

4.2 If the Merchant fails to provide such information and the Freight Forwarder is unaware of the dangerous nature of the goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation, and the Merchant shall be liable for all loss, damage, delay or expenses arising out of their being taken in charge, or their carriage, or of any service incidental thereto
The burden of proving the Freight Forwarder knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the person entitled to the goods.

4.3 If any goods shipped with the knowledge of the Freight Forwarder as to their dangerous nature shall become a danger to the vehicle or cargo, they may in like manner be unloaded or landed at any place or destroyed or rendered innocuous by the Freight Forwarder, without liability on the part of the Freight Forwarder, except to General Average, if any

5. **Description of Goods and Merchant's Packing**

5.1 The Consignor shall be deemed to have guaranteed to the Freight Forwarder the accuracy, at the time the goods were taken in charge by the Freight Forwarder, of the description of the goods, marks, number, quantity, weight and/or volume as furnished by him, and the Consignor shall indemnify the Freight Forwarder against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars. The right of the Freight Forwarder to such indemnity shall in no way limit his responsibility and liability under the bill of lading to any person other than the Consignor

5.2 Without prejudice to Clause 5 (A) (2) (c), the Merchant shall be liable for any loss, damage or injury caused by faulty or insufficient packing of goods or by faulty loading or packing within containers and trailers and on lifts when such loading or packing has been performed by the Merchant or on behalf of the Merchant by a person other than the Freight Forwarder, or by the defect or unsuitability of the containers, trailers or flats, when supplied by the Merchant, and shall indemnify the Freight Forwarder against any additional expenses so caused.

6. **Extent of Liability**

A 1) The Freight Forwarder shall be liable for loss of or damage to the goods occurring between the time when he takes the goods into his charge and the time of delivery

2) The Freight Forwarder shall, however, be relieved of liability for any loss or damage if such loss or damage was caused by,
a) an act or omission of the Merchant, or person other than the Freight Forwarder acting on behalf of the Merchant or from whom the Freight Forwarder took the goods in charge;
b) insufficiency or defective condition of the packaging or marks and/or numbers;
c) handling, loading, stowage or unloading of the goods by the Merchant or any person acting on behalf of the Merchant,
d) inherent vice of the goods,
e) strike, lockout, stoppage or restraint of labour, the consequences of which the Freight Forwarder could not avoid by the exercise of reasonable diligence,
f) any cause or event which the Freight Forwarder could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence,
g) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable international Convention or national law governing liability in respect of nuclear energy.

3) The burden of proving that the loss or damage was due to one or more of the above causes or events shall rest upon the Freight Forwarder
Where the Freight Forwarder establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events specified in b) to d) above, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of these causes or events.

B When in accordance with clause 6 A 1 the Freight Forwarder is liable to pay compensation in respect of loss or damage to the goods and the stage of transport where the loss or damage occurred is known, the liability of the Freight Forwarder in respect of such loss or damage shall be determined by the provisions contained in any international Convention or national law, which provisions
(i) cannot be departed from by private contract, to the detriment of the claimant, and
(ii) would have applied if the Claimant had made a separate and direct contract with the Freight Forwarder in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable.

7. **Paramount Clause**
The Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading, dated Brussels 25th August 1924, or in those countries where they are already in force the Hague Visby Rules contained in the Protocol of Brussels, dated February 23rd 1968, as enacted in the Country of Shipment, shall apply to all carriage of goods by sea and, where no mandatory international or national law applies, to the carriage of goods by inland waterways also, and such provisions shall apply to all goods whether carried on deck or under deck

8. **Limitation Amount**

8.1 When the Freight Forwarder is liable for compensation in respect of loss of or damage to the goods, such compensation shall be calculated by reference to the value of such goods at the place and time they are delivered to the Consignee in accordance with the contract or should have been so delivered.

8.2 The value of the goods shall be fixed according to the current commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

8.3 Compensation shall not, however, exceed 2 SDR (Special Drawing Rights) per kilo of gross weight of the goods lost or damaged, unless, with the consent of the Freight Forwarder, the Merchant has declared a higher value for the goods and such higher value has been stated in the CT Bill of Lading, in which case such higher value shall be the limit. However, the Freight Forwarder shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim.

9. **Delay, Consequential Loss, etc.**
Arrival times are not guaranteed by the Freight Forwarder. If the Freight Forwarder is held liable in respect of delay, consequential loss or damage other than loss of or damage to the goods, the liability of the Freight Forwarder shall be limited to double the freight for the transport covered by the Bill of Lading, or the value of the goods as determined in Clause 8, whichever is the less.

10. **Defenses**

10.1 The defenses and limits of liability provided for in these Conditions shall apply in any action against the Freight Forwarder for loss of or damage or delay to the goods whether the action be founded in contract or in tort.

10.2 The Freight Forwarder shall not be entitled to the benefit of the limitation of liability provided for in paragraph 3 of Clause 8 if it is proved that the loss or damage resulted from an act or omission of the Freight Forwarder done with intent to cause damage or recklessly and with knowledge that damage would probably result.

11. **Liability of Servants and Sub-contractors**

11.1 If an action for loss of or damage to the goods is brought against a person referred to in paragraph 2 of Clause 2, such person shall be entitled to avail himself of the defences and limits of liability which the Freight Forwarder is entitled to invoke under these Conditions.

11.2 However, if it is proved that the loss or damage resulted from an act or omission of the person, done with intent to cause damage or recklessly and with knowledge that damage would probably result, such person shall not be entitled to benefit of limitation of liability provided for in paragraph 3 of Clause 8.

11.3 Subject to the provisions of paragraph 2 of Clause 10 and paragraph 2 of this Cause, the aggregate of the amounts recoverable from the Freight Forwarder and the persons referred to in paragraph 2 of Clause 2 shall in no cause exceed the limits provided for in these Conditions

12. **Method and Route of Transportation**
The Freight Forwarder reserves to himself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods.

13. **Delivery**
If delivery of the goods or any part thereof is not taken by the Merchant, at the time and place when and where the Freight Forwarder is entitled to call upon the Merchant to take delivery thereof, the Freight Forwarder shall be entitled to store the goods or the part thereof at the sole risk of the Merchant, where upon the liability of the Freight forwarder in respect of the goods or that part thereof stored as aforesaid (as the case may be) shall wholly cease and the cost of such storage (if paid by or payable by the Freight Forwarder or any agent or sub-contractor of the Freight Forwarder) shall forthwith upon demand be paid by the Merchant to the Freight Forwarder.

14. **Freight and Charges**

14.1 Freight shall be paid in cash without discount and, whether prepayable or payable at destination, shall be considered as earned on receipt of the goods and not to be returned or relinquished in any event.

14.2 Freight and all other amounts mentioned in this Bill of Lading are to be paid in the currency named in the Bill of Lading or, at the Freight Forwarder's option in the currency of the country of dispatch or destination at the highest rate of exchange for bankers sight bills current for prepayable freight on the day of dispatch and for freight payable at destination on the day when the Merchant is notified of arrival of the goods there or on the date of withdrawal of the delivery order, whichever rate is the higher, or at the option of the Freight Forwarder on the date of the Bill of Lading

14.3 All dues, taxes and charges or other expenses in connection with the goods shall be paid by the Merchant.

14.4 The Merchant Shall reimburse the Freight Forwarder in proportion to the amount of freight for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, warlike operations, epidemics, strikes, government directions or force majeure.

14.5 The Merchant warrants the correctness of the declaration of contents, insurance, weight, measurements or value of the goods but the Freight Forwarder reserves the right to have the contents inspected and the weight, measurements or value verified. If on such inspection it is found the declaration is not correct it is agreed that a sum equal either to five times the difference between the correct figure and the freight charged, or to double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damage to the Freight Forwarder for his inspection costs and losses of freight on other goods notwithstanding any other sum having been stated on the Bill of Lading as freight payable

15. **Lien**
The Freight Forwarder shall have a lien on the goods for any amount due under the Bill of Lading including storage fees and for the cost of recovering same, and may enforce such lien in any reasonable manner which he may think fit.

16. **General Average**
The Merchant shall indemnify the Freight Forwarder in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder in this connection.

17. **Notice**
Unless notice of loss of or damage to the goods and the general nature of it be given in writing to the Freight Forwarder or the persons referred to in paragraph 2 of Clause 2, at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the Bill of Lading, or if the loss or damage be no apparent, within seven consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Freight Forwarder of the goods as described in the Bill of Lading.

18. **Non delivery**
Failure to effect delivery within 90 days after the expiry of a time limit agreed and expressed in a CT Bill of Lading or, where no time limit is agreed and so expressed, failure to effect delivery within 90 days after the time it would be reasonable to allow for diligent completion of the combined transport operation shall, in the absence of evidence to the contrary, give to the party entitled to receive delivery, the right to treat the goods as lost.

19. **Time Bar**
The Freight Forwarder shall be discharged of all liability under the rules of these Conditions, unless suit is brought within nine months after
(i) the delivery of the goods, or
(ii) the date when the goods should have been delived, or
(iii) the date when in accordance with Cause 18, failure to deliver the goods would, in the absence of evidence to the contrary, give to the party entitled to receive delivery, the right to treat the goods as lost.

20. **Jurisdiction**
Actions against the Freight Forwarder may only be instituted in the country where the Freight Forwarder has his principal place of business and shall be decided according to the law of such country

REVEAL COMPUTER PRODUCTS/BURLINGTON AIR EXPRESS
RATE AND SERVICE AGREEMENT

1. Burlington Air Express agrees to provide services and pricing set forth in the attached addenda 1&2 (original bid submitted March 7, 1995 and Bid Day commitments March 28th, 1995).
Effective May 3, 1995.

2. Pricing is guaranteed for one year after the signing of this document. Rates are guaranteed to be market competitive throughout the term of the agreement. Rates may be raised during the term of the agreement only by mutual consent in response to extraordinary circumstances such as war or extreme economic calamity. Said rate increase will be assessed as a specifically identified surcharge.

3. Reveal Computer Products agrees to use Burlington Air Express for air and ocean shipments from the Far East to the USA.

4. Reveal Computer Products reserves the right to negotiate special rates for special requirement deliveries and/or lane segments on an as needed basis.

5. Reveal Computer Products may discontinue shipping with Burlington Air Express on any lane without prior notice should service quality not meet acceptable standards established by Reveal Computer Products in the bid specification. A statistical method for measuring service will be jointly developed by Reveal Computer Products and Burlington Air Express.

6. Either party may cancel this agreement for any reason with 30-days' written notice.

7. Except to the extent caused by the negligence or willful misconduct of Reveal Computer Products or any of its employees, agents, contractors or suppliers, Burlington Air Express agrees to hold Reveal Computer Products harmless from any and all claims and liability (except for shipments) arising from negligence or non-performance with regard to the execution of this agreement.

8. Any official correspondence notifying the other company of intent to cancel or modify this agreement must be communicated in writing and sent by registered mail or traceable overnight express to the CFO of Reveal Computer Products and/or Corporate Counsel of Burlington Air Express.

9. US import shipments will be billed in US Dollars. Wherever possible, rates will be quoted in US Dollars. If necessary, a mutually acceptable conversion factor will be applied utilizing ratios published in the Wall Street Journal. Exception: Singapore will be quoted at SID 3.58 and Taiwan at 60 NTD which will be converted to U.S. Dollars based on the Wall Street Journal (each Tuesday) and at no currency adjustment factor.
Terms: Net 30 Days

10. For other points not contained herein in tendering freight to Burlington Air Express, Reveal Computer Products agrees to be bound to the terms and conditions contained in Burlington's airbill, ocean bill of lading, tariffs and service guide.

REVEAL COMPUTER PRODUCTS
John Smither
Chief Financial Officer
Date: 5/3/95

BURLINGTON AIR EXPRESS
Dennis Eitreim
Chief Operating Officer-Americas
Date: 5-3-95

Steve Dearnley
Chief Operating Officer/International
Date: 5-5-95

4a
APPENDIX B

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REPLY

BRIEF

Supreme Court, U.S.
FILED
FEB 1 2002

(3)

No. 01-768

In the

Supreme Court of the United States

BURLINGTON AIR EXPRESS, INC.,

Petitioner,

v.

LITE-ON PERIPHERALS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF

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REPLY BRIEF

A. Respondent's alleged tort and contract claims arose on land and did not concern traditional maritime activity.

The Brief in Opposition responds to petitioner's challenge of the court's commerce jurisdiction by asserting for the first time that respondent's tort and contract claims are within the court's admiralty and maritime jurisdiction. Petitioner replies that the claims do not fall within that jurisdiction because they do not involve traditional maritime activity and they allege breaches of nonmaritime delivery obligations.

In *Executive Jet Aviation, Inc. v. Cleveland*, 409 U.S. 249, 261, 268 (1972), this Court concluded that a tort claim will not fall within the admiralty and maritime jurisdiction unless the activity from which the tort arose bore a substantial relationship to traditional maritime activity. The Court developed this analysis in *Sisson v. Ruby*, 497 U.S. 358 (1990). Under the traditional-maritime-activity requirement explained in these decisions, respondent's tort claims – for negligence and conversion – do not lie within the admiralty and maritime jurisdiction. As the delivery to Reveal on which respondent's claims were based "was accomplished by truck to Chatsworth, an inland section of the city of Los Angeles some 40 freeway miles northwest of the port" (Opp. Brief at 3), these alleged torts were *not* maritime torts, and do not sound within the admiralty and maritime jurisdiction invoked by the Brief in Opposition.

This Court also has dealt with the line demarking maritime and nonmaritime contracts. In *Exxon Corp. v. Central Gulf Lines, Inc.*, 500 U.S. 603, 612 (1991), this Court

explained that in determining whether a contract is maritime, the court should look to the nature of the services provided by the contract. The Brief in Opposition points out that –

> the bill of lading defined petitioner's service obligations for "combined transport" on a door-to-door basis, *i.e.*, for a continuous international journey from Taiwan to Chatsworth, [and] the surrender-on-delivery clause continued to apply after offloading from the vessel.

Opp. Brief at 9. Respondent asserts that one of petitioner's obligations under the bill of lading was to make "final delivery by truck. . . . " If this final delivery did constitute a breach of contract and misdelivery, as the Ninth Circuit improperly held, then respondent's claims for breach of contract and for misdelivery concern a landside obligation to deliver by truck to a door in Chatsworth, "an inland section of the city of Los Angeles. . . . " Though the bill of lading is a *maritime* contract insofar as it contemplates the transportation of goods by water from Taiwan to Los Angeles, it is a *nonmaritime* contract to the extent that it contemplates final delivery by truck to an inland destination. As the petitioner was held to have breached a land-based delivery obligation, respondent's contract claims – like its tort claims – lie outside the admiralty and maritime jurisdiction. As another court explained:

> [A]dmiralty jurisdiction even with respect to maritime contracts of carriage must end for some reason and at some time. The question is, of course, on what grounds and when. Brocsonic submits that admiralty jurisdiction over a maritime contract may only end upon actual delivery to the rightful consignee – i.e., only after delivery is properly effected. . . . The problem

> with Brocsonic's position is that it confuses the horizon of liability for that of federal jurisdiction. Bills of lading will often continue to govern the rights and obligations of parties long after the paramount element of maritime transport has finished. For instance, the contract of carriage might call for cargo to be shipped via the sea from Vancouver to Hong Kong, and then driven inland by truck to New Delhi. If actual delivery were the test for continuing admiralty jurisdiction, then a traffic accident occurring on the road en route to India would give rise to an admiralty claim in a United States federal court . . . . Brocsonic's interpretation of the law cleaves admiralty jurisdiction from its foundational touchstone of maritime commerce.

Brocsonic, Inc. v. M/V MATHILDE MAERSK, 120 F. Supp. 2d 372, 377 (S.D.N.Y. 2000), *aff'd per curiam*, 270 F.3d 106 (2d Cir. 2001) (substantially adopting district court's reasons).

The alleged tort and contract claims purportedly arose at an inland point at least 40 freeway miles from the water's edge. *See* Opp. Brief at 3, ¶ 3. The latterly invocation of admiralty and maritime jurisdiction is a reflexive response to the petition's inescapable observation that the Carmack Amendment, on which the judgment was based, does not apply to the inland leg of international ocean transportation under petitioner's through bill of lading. *See Capitol Converting Equip., Inc. v. LEP Transport, Inc.*, 965 F.2d 391, 394-95 (7th Cir. 1992).

B. The Uniform Commercial Code applies in the absence of express federal admiralty law.

By invoking admiralty and maritime jurisdiction at the petition stage, respondent seeks to defeat the argument that a state-law rule of decision governs title to the

goods under petitioner's negotiable bill of lading. Respondent informs the Court that, under a maritime bill of lading, "the California statutory provisions quoted at length in the petition are irrelevant to this case." Opp. Brief at 2.

This is incorrect, as a leading commentary explains. "A negotiable instrument calls for the payment of money and represents a debt. A bill of lading calls for the delivery of goods and represents or covers goods." GRANT GILMORE & CHARLES BLACK, THE LAW OF ADMIRALTY 95 (2d ed. 1975). The law that determines who is entitled to goods arriving in the United States under a negotiable bill of lading is the relevant state's enactment of Article 7 of the Uniform Commercial Code. *Id.* at 95-96.

At least eight federal circuits have applied the Uniform Commercial Code to maritime contracts. *See, e.g., Southwest Machine Co. v. F/V COREY PRIDE*, 994 F.2d 37, 40-41 & n.3 (1st Cir. 1993) (contract to install rebuilt engine on existing vessel); *Venizelos, S.A. v. Chase Manhattan Bank*, 425 F.2d 461, 465 (2d Cir. 1970) (letter of credit securing performance of ship charter-party obligations); *Ridings v. The Motor Vessel EFFORT*, 387 F.2d 888, 891 (2d Cir. 1968) (accommodation parties in ship-foreclosure proceeding); *Sun Oil Co. of Pennsylvania v. M/T CARLISLE*, 771 F.2d 805, 808 (3d Cir. 1985) (trade custom overruled because it violates Carriage of Goods by Sea Act, not because U.C.C. custom cannot be invoked in *in rem* proceeding); *Finora Co. v. Amitie Shipping, Ltd.*, 54 F.3d 209, 213-14 (4th Cir. 1995) (ship charter party) ("Absent reason to do otherwise, we prefer to adopt rules in admiralty that accord with, rather than diverge from, standard commercial practice."); *Clem Perrin Marine Towing, Inc. v. Panama Canal Co.*, 730 F.2d 186, 189 (5th Cir.), *cert. denied*, 469

U.S. 1037 (1984) (lease-purchase agreement for tugboat); *Union Planters Nat'l Bank v. World Energy Systems Assocs.*, 816 F.2d 1092, 1095 (6th Cir. 1987) (assignment under U.C.C. in case of maritime attachment under FED. R. CIV. P. SUPP. R. B(1)); *Interpool, Ltd. v. Char Yigh Marine, S.A.*, 890 F.2d 1453, 1459 (1989), *amended*, 918 F.2d 1476 (9th Cir. 1990) (security interest in vessel lease agreement); *Transatlantic Financing Corp. v. United States*, 124 U.S. App. D.C. 183, 363 F.2d 312 (1966) (whether Suez Canal closing made vessel charter party impossible of performance under U.C.C.).

In *Interpool, supra*, 890 F.2d at 1459, the Ninth Circuit addressed whether a ship-financing agreement was subject to the U.C.C. or federal admiralty law:

> We need not decide this difficult issue in this case. In maritime commercial transactions, the Uniform Commercial Code is taken as indicative of the federal common law of admiralty. [*See* GRANT GILMORE & CHARLES BLACK, THE LAW OF ADMIRALTY 721 (2d ed. 1975).] On the issues before us, the relevant California statute, CAL. COM. CODE § 1201, is identical to its U.C.C. counterpart. In such circumstances, "it makes not the slightest difference whether [the U.C.C.] is applied directly as state law or indirectly or analogically as a statement of what the federal law of ship mortgages would be if there was a federal law of ship mortgages." *Id.* [i.e., GILMORE & BLACK at 721]

In *Clem Perrin, supra*, 730 F.2d at 188-89, the Fifth Circuit reached the same conclusion:

> Since the U.C.C. has been regarded as a source both for admiralty and federal common law, however, whether this dispute falls within admiralty or federal question jurisdiction is irrelevant. [Citations omitted.] Regardless of

> which ground of jurisdiction the case falls within, the law to be applied is the same.

The Fifth Circuit could more accurately have said it was applying state law because federal admiralty law does not reach the issue, as this Court explained when upholding the application of Oklahoma's breach-of-warranty law to a marine insurance policy in *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 316, 319 (1955).

These cases reveal that federal admiralty law defers to – and that courts sitting in admiralty apply – the Uniform Commercial Code as enacted by the relevant state. They demonstrate that the question posed by the petition – *whether title to goods under a negotiable bill of lading is governed by a federal-law or a state-law rule of decision* – remains the same whether the court's jurisdiction is based on an act of Congress (as respondent pleaded below) or on the federal admiralty and maritime jurisdiction (as the Brief in Opposition contends). That the question remains the same whether respondent alleges admiralty or commerce jurisdiction is shown by the following observation by this Court in a recent maritime case:

> Whatever might be the unifying theme of this aspect of our admiralty jurisprudence, it assuredly is *not* what the dissent takes it to be, namely, the principle that the States may not impair maritime commerce, see *post*, at 463-464, 467. In *Fireman's Fund*, for example, we did not inquire whether the breach-of-warranty rule Oklahoma imposed would help or harm maritime commerce, but simply whether the State had power to regulate the matter. The no-harm-to-commerce theme that the dissent plays is of

> course familiar to the ear – not from our admiralty repertoire, however, but from our "negative Commerce Clause" jurisprudence, see *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 U.S. 888, 891 (1988). No Commerce Clause challenge is presented in this case.

American Dredging Co. v. Miller, 510 U.S. 443, 452 n.3 (1994) (discussing *Fireman's Fund, supra*, 348 U.S. 310, and holding that Jones Act and federal admiralty law do not preempt Louisiana's law of *forum non conveniens*).

In litigation between private parties which does not touch on rights or duties of the United States, the federal courts will not apply federal common law. Thus, in *Bank of America Nat'l Trust & Sav. Ass'n v. Parnell*, 352 U.S. 29, 33 (1956), this Court held that state law governs disputes between private litigants involving commercial paper (bonds) issued by the United States. In cases between private litigants, the federal courts will apply state law unless it significantly conflicts with a federal policy or interest. *See Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 68 (1966). Neither the Ninth Circuit's decision nor respondent's Brief in Opposition suggests any federal policy or interest – involving either maritime or interstate commerce – that would in any way be infringed or impaired by the application of California's adoption of the Uniform Commercial Code to determine title to the goods covered by petitioner's negotiable bill of lading.

If the Court decides that this is a case of admiralty and maritime jurisdiction, the question presented by the petition will be the same as under the commerce jurisdiction exercised by the courts below: Is it a federal-law or a state-law rule of decision that governs title to goods under a negotiable document of title?

C. The "surrender-on-delivery" clause requires the person claiming the goods to demonstrate title.

The Brief in Opposition contends that the Ninth Circuit was right to enforce the bill's "surrender-on-delivery" clause. Neither respondent nor the Ninth Circuit realizes that the surrender clause restates the Uniform Commercial Code and makes its entitlement and negotiability requirements a part of the contract.

Under California's Uniform Commercial Code, the goods belong to the "person entitled under the document." CAL. U. COM. CODE § 7403(1); U.C.C. § 7-403(1). This means the person to whose order the document runs – in this case, to the order of Reveal, to whom petitioner made delivery – or to any other person who holds the bill *duly indorsed*. *See id.* § 7501(1); U.C.C. § 7-501(1). The "surrender-on-delivery" clause merely reiterates these rules: "One of these Combined Transport Bills of Lading must be surrendered duly endorsed in exchange for the goods." Opp. Brief at 4, ¶ 4. By requiring a person who claims the goods to surrender the bill of lading "duly endorsed," the "surrender-on-delivery" clause makes the U.C.C. rules of entitlement and negotiability a part of the contract.

By accepting the thesis that respondent was entitled to recover damages for the ostensible breach of that clause even though respondent itself could not, and did not, surrender the bill of lading duly indorsed, the Ninth Circuit revealed its profound misunderstanding of the clause and of the U.C.C. rules the clause reiterates. Petitioner argued to the panel's deaf ears that respondent should not be heard to demand the goods, or damages for their "misdelivery," because Reveal had never indorsed the bill, and respondent was, therefore, not a "holder"

and could not comply with the "surrender-on-delivery" clause. As Professors Gilmore and Black explain, a carrier will be liable, if it does not take up the bill of lading, only to a person who is a *holder* of the bill:

> Just as the maker of a note effects its discharge only by payment to the holder, so the carrier will be discharged only by delivery to the holder of the bill. . . . The carrier which delivers goods without taking up and canceling its order bill of lading remains liable to anyone who has purchased the bill for value and in good faith, before or after the improper delivery, and even though the delivery was made to a person legally entitled to possession of the goods.

GILMORE & BLACK, LAW OF ADMIRALTY at 96-97 (citing U.C.C. § 7-403). Petitioner was not liable to respondent because the latter was not a good-faith purchaser and, thus, was not a "holder" of the bill.

By requiring any person who claims the goods to surrender the bill *duly indorsed*, the "surrender-on-delivery" clause – if properly construed – would have protected petitioner from respondent's claim, allowing refusal of respondent's demand for the goods because the bill had not been *duly indorsed* by Reveal, the order party. Contradicting California law and violating the precept of *Erie R. Co. v. Tompkins*, 364 U.S. 68 (1938), the Ninth Circuit created a federal rule of decision that requires carriers to deliver goods to claimants who possess documents of title running to the order of another person who has not duly indorsed the document. This unwarranted federal rule effectively destroys the negotiability of bills of lading by permitting a person who is not a holder – who does not hold the bill by negotiation – to claim the goods.

D. Conclusion

As it did in *O'Melveny & Myers v. FDIC*, 969 F.2d 744 (9th Cir. 1992), *rev'd*, 512 U.S. 79 (1994), the Ninth Circuit below has impermissibly fashioned a federal rule of decision where state law applies. Under the applicable law of California, respondent is not entitled to the judgment that the Ninth Circuit affirmed. Respondent fears "reduc[ing] the Nation's commerce to a chaotic shambles." Opp. Brief at 12. If chaos results, it will come not from a decision by this Court that state law governs documents of title, but rather from future applications of the Ninth Circuit's improper federal rule of decision, which contradicts the uniform state law embodied in Article 7 of the U.C.C.

Respectfully submitted,

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